



PROJECT CLOSING EVENT 20-23 June 2022

Joint UNCTAD/UN Regional Commissions UNDA Project:

Transport and trade connectivity in the age of pandemics

Seamless Connectivity: B.2 International commercial transport and trade law

Geneva, 21 June 2022

Implications of the pandemic for key commercial contracts in international trade - overview of UNCTAD work and related policy considerations

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COVID-19: Key international commercial law implications

Unprecedented disruptions associated with the pandemic and its socioeconomic consequences giving rise to a plethora of legal issues affecting traders across the globe

In all cases where performance is disrupted, delayed or impossible, legal consequences arise, increasing need for (costly) dispute resolution/litigation; jurisdictional issues in a globalized context

Effects may lead to further disruption, business losses and bankruptcies and overwhelm courts and legal systems, with implications for governance and the rule of law

Common and collaborative approaches needed to reduce incidence of disputes and facilitate their resolution, including

- contractual extensions; restraint in pursuing legal rights and claims; efforts at mediation and informal dispute resolution
- commercial risk-allocation: standard form clauses drafted to address contractual rights/ obligations in light of the circumstances associated with the pandemic



Additional considerations arise from greater reliance on electronic trading in a physically constrained world:

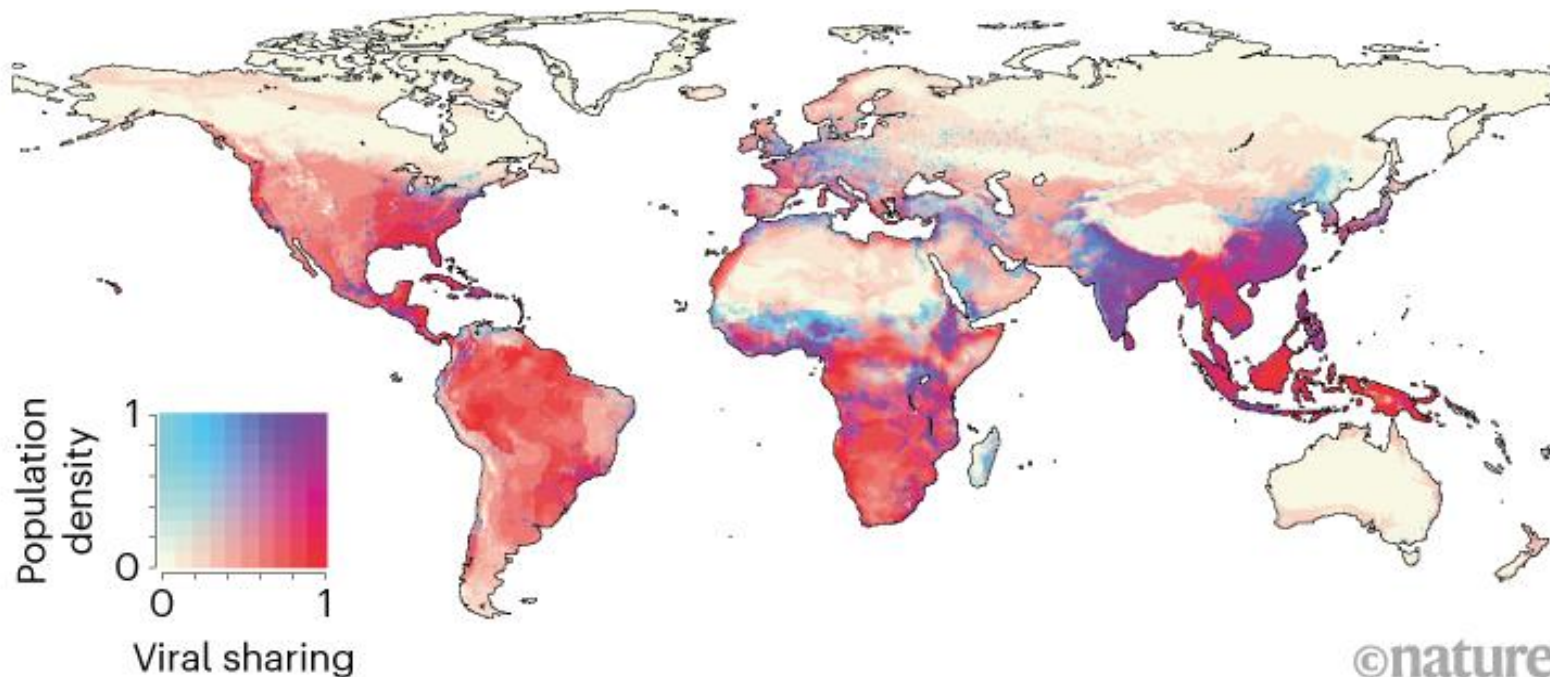
- **Growth in E-commerce, but contracts need to be performed in the real world**, (i.e goods need to be manufactured/stored/distributed/transported/delivered). Pandemic related delay and disruption remain a major challenge.
- **Use of electronic alternatives to paper-based documents** can help avoid delay in transmission of documents; should be encouraged and **facilitated** where possible
- **Cyber-risks likely to increase significantly** as a result of an increasing shift to virtual interactions at all levels; this increases vulnerabilities across the globe, with the potential for crippling effects on critical supply-chains and services
- **Coordinated efforts at protection against cyber-crime and attacks should be pursued as a matter of urgency**; requires significant scaling up of investment and capacity building, including in respect of skilled human resources.

See also [UNCTAD Policy Brief 79](#) 'Covid-19: A 10-Point Action Plan to Strengthen International Trade and Transport Facilitation in Times of Pandemic' (April 2020)



Future pandemics risk: Climate change could lead to new pandemics

Models suggest that by 2070, climate change will be driving many mammal species to cooler regions, where they will meet for the first time and could exchange viruses. If Earth warms by 2 °C, they say, the regions with the highest chance of virus sharing will overlap with areas of dense human population, including parts of India and Indonesia. That will increase the risk of pathogens transferring to people.





Joint UNCTAD/UN Regional Commissions TA Project:
Transport and trade connectivity in the age of pandemics

B.2 International commercial transport and trade law

Project component with focus on **key international commercial law implications**, led by UNCTAD, with contributions from ESCAP

Main UNCTAD activities/deliverables, to respond to demand for advice and guidance:

- **Research and analysis**
 - substantive briefing notes and analytical reports
- **Training and capacity-building**
 - online/virtual training courses for commercial parties/legal advisers

Key message:

To avoid potentially lengthy and costly litigation, and keep trade flowing, commercial parties should review their contracts and consider carefully worded specialist clauses to accommodate delay /disruption and provide for balanced allocation of commercial risk



COVID-19: Key international commercial law implications

Much of global commodities' trade is conducted on CIF and FOB terms and more than 80% of the volume of global merchandise trade is carried by sea.

Implications of pandemic for contractual rights / obligations deserve particular attention and need to be better understood by commercial parties, to reduce the need for costly litigation and to help inform commercial contracting practice into the future.

Focus of TA on **key commercial contracts in international shipping and trade** in response to important need for advice:

- **Contracts for the international sale of goods on shipment terms CIF and FOB; and**
- **Contracts for carriage of goods by sea under charterparties and bills of lading**
- **Some consideration of contracts for multimodal transport**

To help in the understanding and assessment of

- **key issues arising from the pandemic for different types of contracts**
- **relevant legal implications**
- **contractual approaches to commercial risk-allocation between the parties through the use of standard form clauses**



I. Research, Analysis and Guidance:



COVID-19 implications for commercial contracts: International sale of goods on CIF and FOB terms



COVID-19 implications for commercial contracts: Carriage of goods by sea and related cargo claims



Contracts for the carriage of goods by sea and multimodal transport

Available at <https://unctad.org/ttl/legal>; see also related report by [ESCAP](#)

Another report forthcoming (focus on contractual approaches to risk allocation / loss reduction in international sale of goods on shipment term)



II. Training and capacity building:

'Implications of the COVID-19 pandemic for commercial contracts - International Sale of Goods on Shipment Terms and Carriage of Goods by Sea'

4-day training course, offered **virtually** on **four sets of dates** in May/June 2022 to accommodate participants in different **time-zones**; online sessions and related **training materials**

Main target audience: legal professionals/advisers involved in contract negotiation and/or providing advice on rights, obligations, claims, dispute resolution; others involved in related **training and continuing education**

- especially from developing countries. Female participants also particularly encouraged

Experienced academic teaching team with extensive specialist expertise

Course structure

DAY 1 – Setting the scene; Sale of Goods on Shipment Terms CIF/FOB; Force Majeure Clauses

DAY 2 – Voyage Charterparties and Time Charterparties; Pandemics Clauses

DAY 3 – Bills of Lading and Cargo Claims; Related considerations for Sale of Goods, L/Cr.

DAY 4 – Exercises/Problems

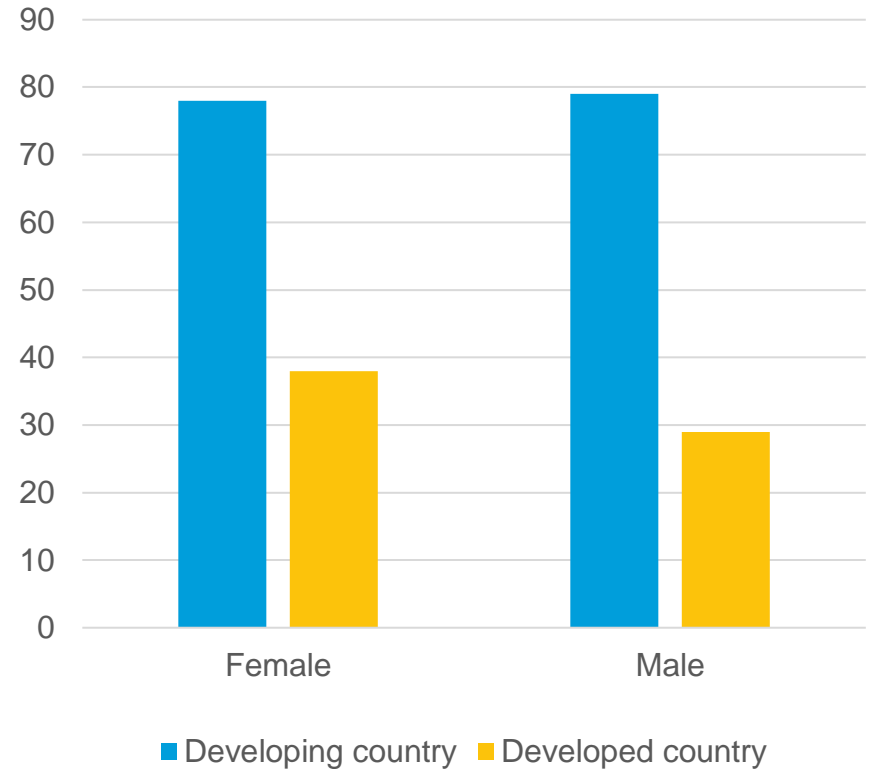
Participants

- 4 training courses for participants in different time-zones
- 224 participants trained, from 60 countries
- 157 from developing countries
- 116 female participants
- 108 male participants

Breakdown:

- 35% Lawyers/Legal Advisers;
- 12% Traders/Commercial parties;
- 12 %Government;
- 12% Industry Organizations;
- 21% Academia and students

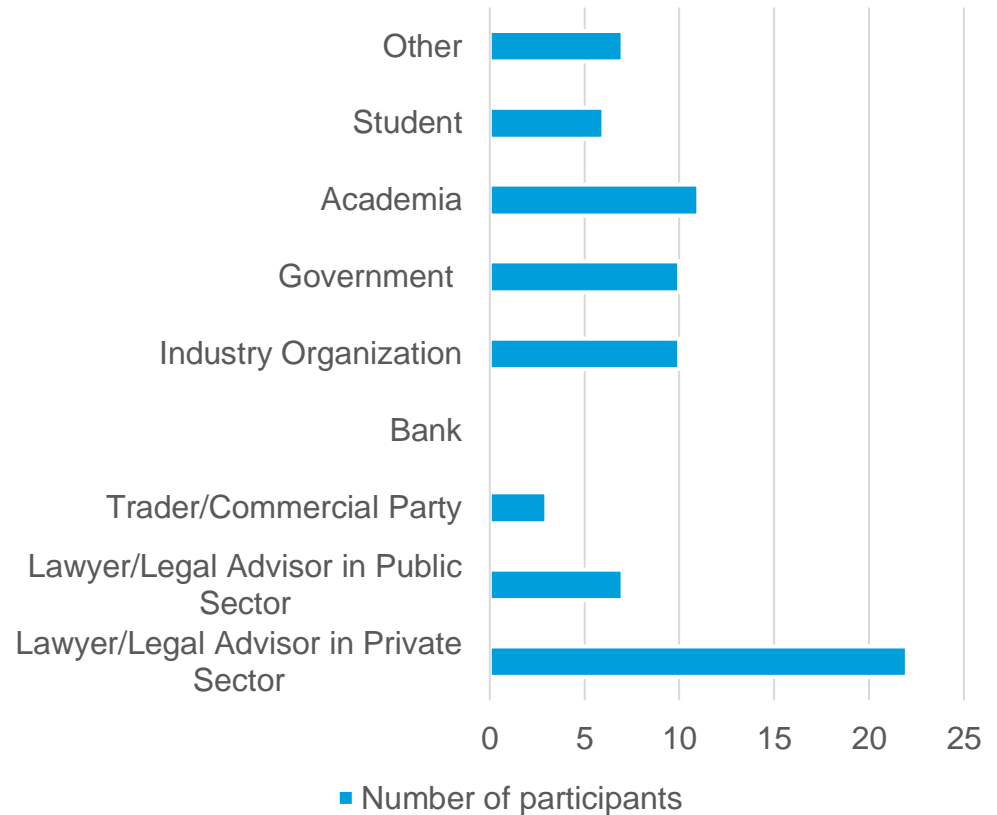
Very positive informal and formal feedback received



Course evaluation - Survey responses

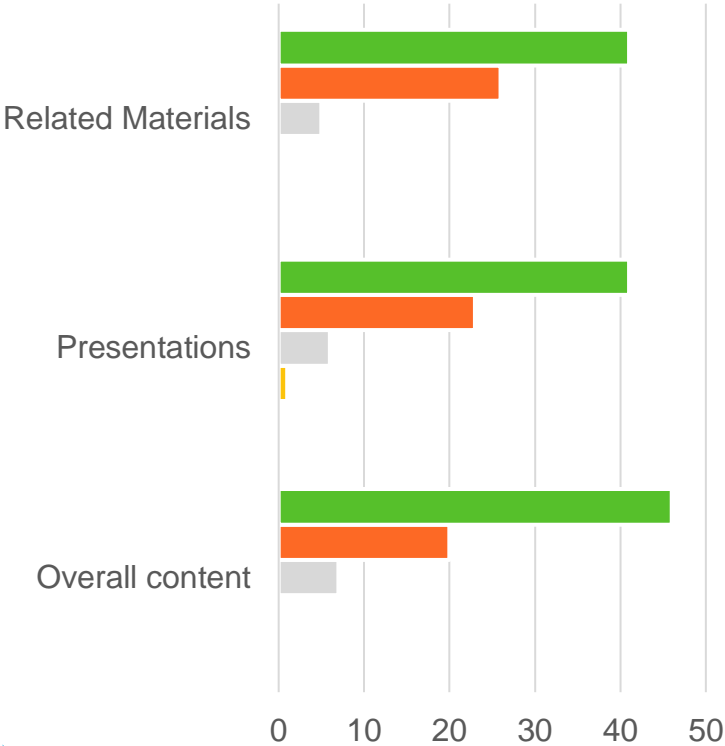
- 76 survey responses (76/224)
- Diverse group of professionals

Professional background

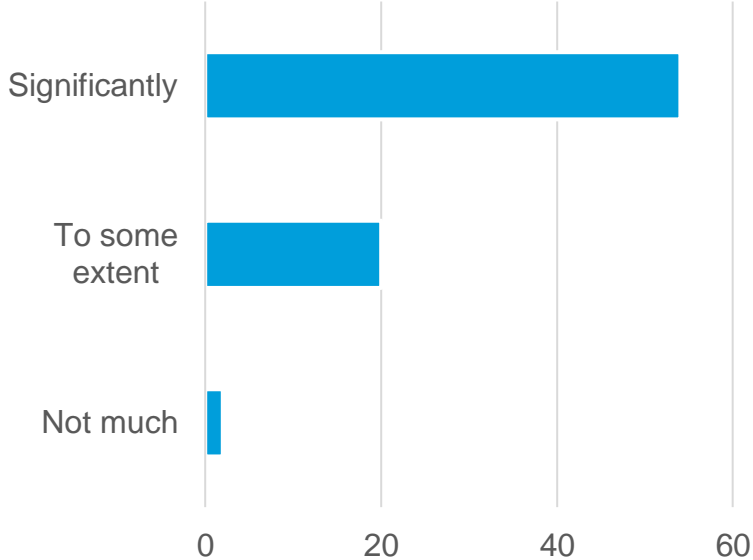


Survey responses

Course materials, presentation and content rating:



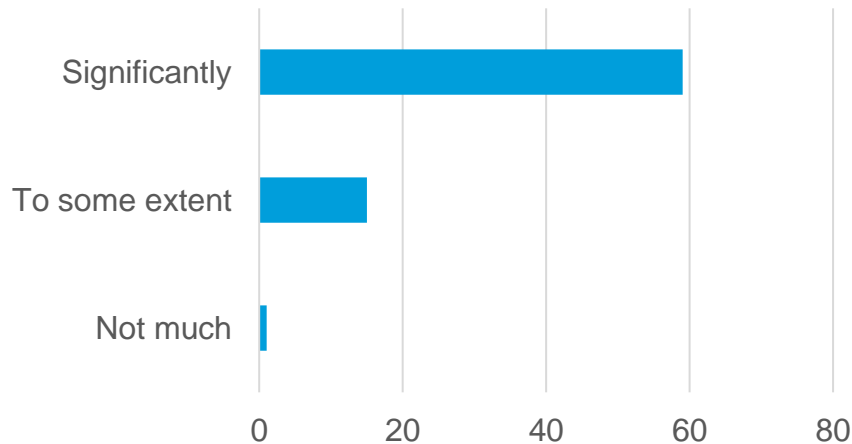
Participants deemed the course useful for their work:



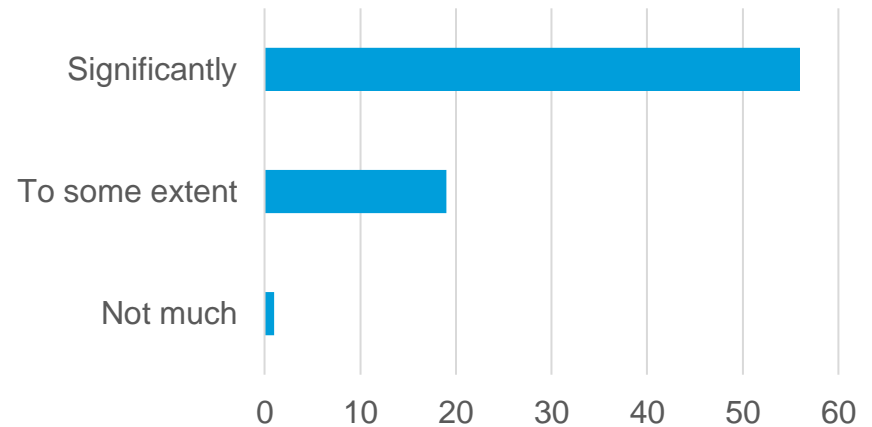
■ Excellent ■ Very Good ■ Good ■ Fair ■ Poor

Survey responses

Training course **helped improve** participants **knowledge and understanding** of **key implications** of the pandemic on commercial contracts for **Carriage of Goods by Sea**.



Training course **helped improve** participants **knowledge and understanding** of the pandemic on commercial contracts for the **International Sale of Goods on CIF and FOB terms**





Related policy considerations

- **Crew changes should be allowed and facilitated at all times**, to ensure that no crew are forced to remain at sea for longer than the maximum period stipulated in the Maritime Labour Convention 2006.
- Governments, international organizations and industry need to collaborate in this respect and accelerate their efforts to address the ongoing crew change crisis.
- Countries should also consider the issue of giving seafarers priority access to vaccinations, both in the interests of public and seafarer health, and to facilitate the logistics of international trade and transport, including in respect of essential goods and medical supplies.

See also [Facilitating crew changes and repatriation of seafarers during the COVID-19 pandemic and beyond](#), UNCTAD, March 2021; [Chapter 5, Review of Maritime Transport 2021](#); [UNCTAD Policy Brief 91](#), December 2021; IMO, ILO, UNCTAD and WHO, [Joint Statement](#), February 2022



Related policy considerations

- To address the issue of delayed documents and avoid the incidence and costly resolution of related legal disputes, **the remaining legal and regulatory obstacles to the adoption of electronic documents in international trade need to be removed.**
- Progress has been made with the recognition of electronic documentation in the Montreal Convention 1999, the widespread adoption of the IATA electronic waybill, and the provision for electronic documents in the CMR, but more needs to be done as regards electronic alternatives to sea transport documents such as bills of lading and waybills.
- The [UK Law Commission](#)'s recent consultation and report on this issue is encouraging and it is possible that its proposed draft Electronic Trade Documents bill may be enacted in 2022.



Related policy considerations

- Governments could consider **mandatory controls on container demurrage** accruing at ports whose operation is affected by pandemic/epidemic restrictions in that particular country. In March 2020, the Indian government made recommendations to this effect and in April 2020, the US issued its amended guidance under the Shipping Act.
- Countries could also consider **extending statutory protection against unfair contract terms**, like the Unfair Contract Terms Act 1977 in the UK, to container demurrage provisions in bills of lading during times of (future) epidemics and pandemics.
- Governments should strive to ensure that **cross-border checks applicable to freight transport are kept to a minimum to avoid delay**, in particular in the transit of goods by road.
- Finally, governments should consider **strengthening institutions and mechanisms for formal and informal dispute resolution**, to ensure these are able to cope with a likely increase in contractual disputes in the context of the COVID-19 pandemic.



Participants in today's webinar are encouraged to provide their suggestions for areas where policy action may be required in the chatbox

Thank you!